

IN THE MATTER OF:)
) DOCKET NO. 99-AFC-2
THE APPLICATION FOR)
CERTIFICATION FOR THE)
THREE MOUNTAIN POWER)
PROJECT)
)

TUESDAY, MARCH 6, 2001

1:00 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSIONERS

Mr. William Keese, Chairperson and Presiding Member

Mr. Robert Laurie, Associate Member

HEARING OFFICER

Mr. Ed Bouillon

STAFF

Ms. Caryn J. Holmes, Senior Staff Counsel

Mr. Richard K. Buell, Siting Project Manager

THE APPLICANT

White & Case

BY: ANN T. MACLEOD, ESQ.

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Mr. Martin J. McFadden, Jr.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 PROCEEDINGS

2 CHAIRPERSON KEESE: I will call this meeting to
3 order. This is the meeting of the Siting Committee on the
4 Three Mountain Power Project. Commissioner Laurie may be
5 joining us momentarily.

6 The subject before us today is the acceptance of
7 additional evidence on a joint request of the applicant
8 and staff to reopen the record to introduce some
9 additional evidence.

10 Mr. Bouillon, will you walk us through the
11 process.

12 HEARING OFFICER BOUILLON: Thank you,
13 Commissioner. It's my understanding that I have before me
14 dated February the 14th, 2001 a letter from Ann MacLeod
15 and Richard Ratliff, attorneys for the Applicant, and the
16 staff respectively, requesting that we accept agreed upon
17 conditions and attach that as a motion to reopen the
18 record, specifically with regard to soil and water
19 resources and specifically with regard to conditions of
20 certification 9, 10, 11, 12, 13, and 18.

21 CHAIRPERSON KEESE: I'll note Commission Laurie's
22 presence for the moment. He'll be stepping out.

23 HEARING OFFICER BOUILLON: Also attached to that
24 letter is Attachment B is certain language that they wish
25 to have incorporated in the Presiding Member's Proposed

1 Decision with regard to the -- as I recall, with regard to
2 the guidance for the project manager in determining
3 compliance with those conditions which are attached.

4 I want to add that this morning I received from
5 Mr. Buell, the project manager for the staff, a copy of
6 Soil and Water 4. Attached to that condition was an
7 E-mail message, which I will read in its entirety.

8 "We left the following condition out when we
9 filed the stipulation. I assume that stipulation means
10 these stipulations which I've just referred" Is that
11 correct, Mr. Buell?

12 SITING PROJECT MANAGER BUELL: Yes, that's
13 correct.

14 MS. MacLEOD: Can I just take a look at this?

15 HEARING OFFICER BOUILLON: First, let me go back.
16 Earlier today, and I believe yesterday, I received, first,
17 from the Burney Resource Group a statement.

18 It says, "re, Position of Burney Resource Group
19 concerning specifically the conditions of certification
20 for well interference..." et cetera, et cetera, "...and
21 the Shasta County Fire Authority to construct Prevention
22 of Significant Deterioration permit." That is a two-page
23 document dated March the 5th, 2001.

24 I am going to mark that document as Exhibit
25 number 85 as it reflects their position on the stipulation

1 that was reached.

2 (Thereupon the above-referenced document
3 was marked as Exhibit 85 for identification.)

4 HEARING OFFICER BOUILLON: Do the parties all
5 have a copies of that document? Did you see the E-mail
6 from the Burney Resource Group?

7 MS. MacLEOD: Was it --

8 HEARING OFFICER BOUILLON: It was dated March the
9 5th, it was yesterday.

10 MS. MacLEOD: Yes, I did.

11 HEARING OFFICER BOUILLON: Mr. Buell.

12 SITING PROJECT MANAGER BUELL: Yes, we did
13 receive that. I would also --

14 HEARING OFFICER BOUILLON: They indicate that
15 they are, the word is comfortable they use in Exhibit 85,
16 with the specific conditions of certification, and
17 therefore the upshot is that they have no objection to the
18 agreement reached by the staff and the applicant.

19 In addition today, via E-mail, I received a
20 statement from Black Ranch through attorney Mr. Longstreth
21 indicating that they have no objection to the proposed
22 conditions of certification. And I am going to mark a
23 one-page document so stating as Exhibit number 86.

24 (Thereupon the above-referenced document was
25 marked as Exhibit 86 for identification.)

1 HEARING OFFICER BOUILLON: And before we go any
2 further, I'm going to mark both the letter from Mr.
3 Ratliff and Ms. MacLeod. I believe I'll mark them
4 separately. The letter from the two lawyers I will mark
5 as Exhibit number 87.

6 (Thereupon the above-referenced document was
7 marked as Exhibit 87 for identification.)

8 HEARING OFFICER BOUILLON: The motion to reopen
9 the evidentiary record I'm going to mark as Exhibit 88.

10 (Thereupon the above-referenced document was
11 marked as Exhibit 88 for identification.)

12 HEARING OFFICER BOUILLON: The conditions of
13 certification that was attached to that letter I'm going
14 to mark as Exhibit number 89.

15 (Thereupon the above-referenced document was
16 marked as Exhibit 89 for identification.)

17 HEARING OFFICER BOUILLON: And Attachment B,
18 which is entitled PMPD language, somewhat presumptively, I
19 might add, I will mark as exhibit number 90.

20 (Thereupon the above-referenced document was
21 marked as Exhibit 90 for identification.)

22 HEARING OFFICER BOUILLON: I would like to ask
23 staff and applicant to comment on the inclusion of Soil
24 and Water 4, in light of the fact that I received, also
25 from Marcy Crockett, immediately after she received this

1 from Mr. Buell this morning, a letter that -- an E-mail
2 that said basically what's this?

3 Can either party shed any light upon the
4 position of -- first of all, I'd like to ask the applicant
5 are you in agreement with inclusion of Soil and Water 4 as
6 presented by Mr. Buell this morning as a part of your
7 agreement?

8 MS. MacLEOD: Yes, Mr. Hearing Officer. I'll try
9 and speak more clearly. Soil and Water 4, there is one
10 change to Soil and Water 4 that was negotiated as part of
11 these other conditions on well interference several weeks
12 ago. We had three days of workshops in which Ms. Crockett
13 on behalf of the Burney Resource Group and all of the
14 other parties participated.

15 There was simply one sentence added to Soil and
16 Water 4, which was intended to make that condition
17 consistent with some of the other requirements. That
18 sentence was added. There was no controversy or
19 suggestion regarding the addition of that sentence. And
20 it appears to me, although I've been gone for awhile, that
21 it was inadvertently omitted from the package of
22 conditions that went back and forth and to which the staff
23 and Three Mountain Power have stipulated.

24 So while it is news to me even that this was left
25 out, when I look at it, it was something that was agreed

1 upon between staff and Three Mountain power several weeks
2 ago, and it was just inadvertently omitted.

3 SITING PROJECT MANAGER BUELL: Yes. If I might
4 also add, I did correspond with Marcy Crockett this
5 morning and told her what the nature of this change was.
6 She agrees -- sent me an E-mail back. I don't think she
7 sent it to all parties. I can have that docketed, but, in
8 essence, said that they agree with the replacement of
9 Condition 4 as attached.

10 HEARING OFFICER BOUILLON: Did you just receive
11 that?

12 SITING PROJECT MANAGER BUELL: I just received
13 that at about 11:00 o'clock.

14 HEARING OFFICER BOUILLON: All right. Be that as
15 it may, we are going to keep that as a separate exhibit
16 and not make it a part of the stipulation or agreement,
17 however you have entitled it.

18 But do I understand I have a joint motion before
19 the Committee to admit all of the Exhibits that I've
20 mentioned this morning?

21 SENIOR STAFF COUNSEL HOLMES: Actually, I think
22 that the joint motion just asks that the record be
23 reopened to received the three declarations. The reason
24 for that being that we think that there's sufficient
25 evidence in the record already to support the additional

1 documents that were part of the agreement.

2 HEARING OFFICER BOUILLON: We have reopened the
3 record and the Committee indicates to me that we will
4 accept each of those exhibits.

5 (Thereupon Exhibits 85 through 90 were
6 received into evidence.)

7 HEARING OFFICER BOUILLON: In addition, it's my
8 understanding that the staff wishes to offer into evidence
9 the final authority for construction for a Significant
10 Deterioration Permit, which was issued by the Shasta
11 County Air Quality Management District. It's my
12 understanding they have no witness here. But unless there
13 is an objection, we will enter that document as next in
14 order, which I believe is 91?

15 SENIOR STAFF COUNSEL HOLMES: Yes.

16 HEARING OFFICER BOUILLON: Is there any objection
17 to that?

18 MS. MacLEDO: We have no objection.

19 (Thereupon the above-referenced document
20 was marked for identification and received
21 into evidence as Exhibit 91.)

22 MS. MacLEOD: And if the Committee pleases, we
23 have some additional documents relating to the final
24 issuance of the biological opinion and the issuance of the
25 PSD permit that, if you were interested, we'd like to

1 submit. We don't believe it is necessary to include them
2 in the evidentiary record, but if you -- because you
3 wanted the PSD permit, we thought you might also be
4 interested in these additional documents.

5 HEARING OFFICER BOUILLON: I did see it come
6 across my desk this morning, a copy of the final -- what
7 appears to be the final biological opinion. I have not
8 yet read that.

9 MS. MacLEOD: Mr. Bouillon and the Committee, you
10 may remember that a number of months ago there were some
11 issues regarding the EPA's position on having the PSD
12 permit issued prior to the biological opinion. And since
13 that was a controversy that you were aware of, we just
14 thought the Committee might be interested in knowing that
15 the entire matter had been resolved satisfactorily -- or
16 to the satisfaction of EPA as well as to the satisfaction
17 of the air district and the Applicant.

18 The final biological opinion was issued in
19 January. The EPA sent a letter to the local air district,
20 at that time, informing them that it was appropriate or
21 that it would be appropriate to issue the PSD permit and
22 that the US EPA believed that that was consistent with the
23 requirements of the Endangered Species Act.

24 The air district then issued the PSD permit,
25 which you've accepted into evidence now. And following

1 the issuance of that PSD permit on February 15th, US EPA
2 sent a letter to the Shasta Quality Air District informing
3 them that they had determined that the issuance of the PSD
4 permit was consistent with all the requirements of the
5 federal Endangered Species Act.

6 HEARING OFFICER BOUILLON: And are you offering
7 those two documents then?

8 MS. MacLEOD: There would be four documents, one
9 is the final biological opinion.

10 HEARING OFFICER BOUILLON: Bring them up here, we
11 can read them into the record and identify them as we go.

12 This first document I've been handed is the
13 formal consultation on the proposed Three Mountain Power
14 Project, Shasta County dated January the 10th. It is, in
15 fact, what appears to be a 40-page final biological
16 opinion. We will mark that exhibit number 92.

17 (Thereupon the above-referenced document was
18 marked as Exhibit 92 for identification.)

19 HEARING OFFICER BOUILLON: I've also just been
20 handed the authority to construct. I'm not at all sure if
21 that's different than -- I think this is the same as
22 Exhibit number 91.

23 MR. McFADDEN: I think it is.

24 HEARING OFFICER BOUILLON: I'm going to give that
25 back to you before I confuse myself.

1 MR. McFADDEN: It is the same.

2 HEARING OFFICER BOUILLON: I've also been handed
3 a letter from the United States EPA dated January 26th,
4 2001 regarding the final biological opinion or letter
5 addressed to Mr. Michael Cuso of the Shasta Air Quality
6 Management District. I will mark that as Exhibit number
7 93.

8 (Thereupon the above-referenced document was
9 marked as Exhibit 93 for identification.)

10 HEARING OFFICER BOUILLON: And a letter from the
11 United States Environmental Protection Agency to Mr. Cuso
12 dated February the 15th, 2001 and I will mark that Exhibit
13 number 94.

14 (Thereupon the above-referenced document was
15 marked as Exhibit 94 for identification.)

16 HEARING OFFICER BOUILLON: Ms. Holmes, are you
17 aware of those documents?

18 MS. HOLMES: Yes, I am.

19 HEARING OFFICER BOUILLON: Do you have any
20 objection to them being received in evidence?

21 SENIOR STAFF COUNSEL HOLMES: I do not.

22 HEARING OFFICER BOUILLON: They will be admitted.

23 (Thereupon Exhibits 92 through 94 were
24 admitted into evidence.)

25 HEARING OFFICER BOUILLON: I believe that takes

1 care of all the matters surrounding the request to reopen
2 the record.

3 However, I would like to ask each of the parties,
4 I have not done this ahead of time, so you may not be
5 prepared, but are there -- I would like to know if there
6 are any -- either of you could comment, if there are any
7 significant areas of disagreement either between
8 yourselves, the two of you are here today, or between
9 either one of you and any of the intervenors other than
10 the differences on air quality, which I'm very aware.

11 SENIOR STAFF COUNSEL HOLMES: Could I step back
12 for just a second first, please. With respect to the
13 exhibits, I understand that you have received the -- or
14 you're intending to receive the declarations into evidence
15 of Mr. Buell, Mr. McFadden and Ms. Bond, but I don't
16 believe you marked them.

17 So I don't know if you'd like to have them
18 individually marked.

19 HEARING OFFICER BUELL: I suppose those were
20 attachments. I didn't get far enough back into the
21 declarations. I did not. Those were attached to the
22 letter, which I had marked.

23 SENIOR STAFF COUNSEL HOLMES: You had the letter
24 marked as Exhibit 87, but then you had the motion, which
25 was part of the package, separately marked as well as the

1 conditions of certification.

2 HEARING OFFICER BOUILLON: Yes, I know. I'm
3 looking for the letter itself, Exhibit 87, which refers to
4 those declarations. They are declarations and statements
5 of qualifications. We will mark that separately as
6 Exhibit number 95, and that will be received.

7 (Thereupon the above-referenced document was
8 marked for identification and received into
9 evidence as Exhibit 95.)

10 HEARING OFFICER BOUILLON: And that is all of
11 them together. They are the declaration of Martin
12 McFadden, witness qualifications of Richard Buell,
13 declaration of Richard Buell, qualifications of Linda Bond
14 and declaration of Linda Bond.

15 Anything else, Ms. Holmes?

16 SENIOR STAFF COUNSEL HOLMES: With respect to the
17 proposed change to Soils and Water 4 that I believe that
18 the parties agreed to, it was my understanding that you'd
19 chose not to move that into the evidentiary record, at
20 this point. It's our belief that there's sufficient basis
21 in the evidentiary record with the declarations that you
22 just received to support that proposed language. Would
23 you prefer to see that as comments on our proposed
24 decision or in some other format?

25 HEARING OFFICER BOUILLON: I'm sorry, say that

1 again.

2 SENIOR STAFF COUNSEL HOLMES: We're trying to
3 make sure that the changes to Soil and Water Condition of
4 Certification 4 that we all agreed to, that the record is
5 clear that we're recommending that the Commission adopt
6 those amendments to its final decision. You chose not to
7 accept that language here today, if I understood correctly
8 what happened earlier.

9 I just wanted to make it clear that that's still
10 our recommendation. We believe that there's sufficient
11 evidence in the record to support that change.

12 HEARING OFFICER BOUILLON: Are you speaking of --
13 You're speaking of Soil and Water 4.

14 SENIOR STAFF COUNSEL HOLMES: Yes.

15 HEARING OFFICER BOUILLON: I'm not saying -- we
16 put it in the record. We have accepted that into
17 evidence. We have not made it apart of the agreement.
18 You have indicated your agreement with it, but I do not
19 want to add to the agreement that the other parties have
20 indicated their nonopposition to.

21 SENIOR STAFF COUNSEL HOLMES: I understand what
22 you're saying now.

23 HEARING OFFICER BOUILLON: So we're just treating
24 it as a separate document, so that the comments of both
25 Black Ranch and the Burney Resource Group are complete

1 unto themselves, without having to put an asterisk on
2 them, and so oh, by the way, it doesn't apply to the
3 Exhibit as we admitted it.

4 SENIOR STAFF COUNSEL HOLMES: I understand.

5 Thank you.

6 HEARING OFFICER BOUILLON: But Soil and Water 4,
7 assuming I don't have any further motion from either the
8 Burney Resource Group or Black Ranch or Mr. Hathaway for
9 that matter, to reopen the record to voice some opposition
10 to that condition, I see no reason why it would not be
11 adopted, but it is in evidence.

12 SENIOR STAFF COUNSEL HOLMES: Thank you. Is it
13 part of Exhibit 89 or does it need to have its own number?

14 HEARING OFFICER BOUILLON: I'm sorry, I couldn't
15 hear you.

16 SENIOR STAFF COUNSEL HOLMES: Is it part of
17 Exhibit 89, which is the Conditions of Certification that
18 were included in the original package or does it need a
19 separate exhibit number?

20 HEARING OFFICER BOUILLON: Yeah.

21 (Laughter.)

22 SENIOR STAFF COUNSEL HOLMES: Which? Do you want
23 us to treat it as part of Exhibit 89, which consists of
24 the conditions of certification that were mailed out to
25 all of the people, or do you want to give it a separate

1 number?

2 HEARING OFFICER BOUILLON: I did give it a
3 separate number, I thought.

4 SENIOR STAFF COUNSEL HOLMES: No, I don't believe
5 you did.

6 I have the exhibit 89 as the conditions of
7 certification --

8 HEARING OFFICER BOUILLON: I'm sorry. That was
9 the source of our confusion. I thought I had given it a
10 separate number as we were going through them. Both the
11 letter from Mr. Buell, the E-mail letter, and Soil and
12 Water 4 as was attached to that E-mail letter, we will
13 then mark as Exhibit number 96. Does that make you happy
14 Ms. Holmes?

15 SENIOR STAFF COUNSEL HOLMES: I am very happy,
16 thank you.

17 (Thereupon the above-referenced document was
18 marked as Exhibit 96 for identification.)

19 HEARING OFFICER BOUILLON: I apologize. No
20 wonder I couldn't understand. We were barely in the same
21 room and we certainly weren't in the same paragraph.

22 SENIOR STAFF COUNSEL HOLMES: With respect --

23 HEARING OFFICER BOUILLON: That will be admitted
24 also.

25 (Thereupon Exhibit 96 was admitted into

1 evidence.)

2 SENIOR STAFF COUNSEL HOLMES: Thank you.

3 With respect to your earlier question, I'm aware
4 of no disagreements between staff and the applicant that
5 go to any of the Conditions of Certification.

6 HEARING OFFICER BOUILLON: Okay. Ms. MacLeod.

7 MS. MacLEOD: There are no areas of disagreement
8 between staff and Three Mountain Power. We have a number
9 of other intervenors in the proceeding. All of the issues
10 that had been raised by the CURE Labor Union Coalition
11 were resolved almost eight months ago.

12 At about the same time, we entered into a
13 stipulation or settlement of sorts with the State Parks.
14 They also have expressed that any of their concerns about
15 Three Mountain Power have been fully resolved.

16 There have been several other intervenors who
17 have participated in this proceeding since this
18 comprehensive mitigation plan was filed last August. They
19 include Black Ranch. There were a couple of air quality
20 issues raised by Black Ranch. I do not believe they were
21 raised at the time of hearings.

22 I do not believe there are any other issues that
23 Black Ranch has expressed any concern about.

24 Mr. Abe Hathaway was participating in them
25 individually as an intervenor. I am not aware of any

1 existing disputes with Mr. Hathaway. He did not file any
2 testimony at hearings, did not actively participate in
3 testimony or participate in the hearings. He was involved
4 in the development of those well interference conditions.
5 And I am not sure that he communicated his opinion one way
6 or the other to the Committee, but it was our
7 understanding that he was satisfied at the end of that
8 process. I have nothing in writing to indicate that.

9 There was an individual intervenor who
10 participated in this proceeding, named Mr. Claude Evans.
11 At one point in this process, Mr. Evans had indicated to
12 us that he was no longer going to actively participate in
13 this proceeding. He did not participate actively in
14 hearings. He did attend some of the workshops on the well
15 interference conditions, but we've not heard anything from
16 him one way or the other as to his position on those
17 conditions.

18 HEARING OFFICER BOUILLON: Let me interrupt you
19 there with regard to Mr. Evans. Was his limited
20 participation due to his satisfaction in your opinion or
21 due to his medical condition?

22 MS. MacLEOD: He communicated with
23 representatives of Three Mountain Power before his -- I
24 know he had some kind of a significant health issue, but
25 he had communicated with Three Mountain Power, I believe,

1 before that time. Maybe I better check with Mr. McFadden.

2 I just thought I would check with Mr. McFadden.

3 His recollection of the facts are the same as mine, but I
4 don't want to put any words in Mr. Evans' mouth. He had
5 communicated to a representative of Three Mountain Power
6 after the mitigation plan was filed that he was not going
7 to be continuing to actively participate in the proceeding
8 and raise, you know, further issues of concern.

9 After that time, he did not actively participate.
10 I can't tell you what his reasons were. I knew he had
11 some health issues. I don't want to presume to know all
12 of the reasons. We were surprised that he attended the
13 workshop on the well interference conditions because we
14 did not expect him to further participate. And he did not
15 communicate with us nor has he made any filings for a
16 number of months. So, as I said, I cannot presume to know
17 what his reasons are.

18 There was another intervenor, Burney Forest
19 Products. Burney Forest Products has not actively
20 participated in the proceeding, and the two other
21 remaining intervenors, one is TANC. As you know, TANC had
22 a number of issues related to transmission and reliability
23 issues. Those are the only issues they have raised in
24 this proceeding.

25 And then, finally, the Burney Resource Group.

1 The Burney Resource Group indicated in an E-mail from
2 Marcy Crockett that they had no concerns about the well
3 interference conditions. They raised a number of rather
4 open-ended concerns at hearings, of which you are aware,
5 in addition to air quality and water resources and
6 biological resources. And there has been no further
7 discussion regarding any of those disputed issues, since
8 the time of hearings.

9 HEARING OFFICER BOUILLON: All right. I would
10 add, because I'm not at all sure you've both seen this
11 E-mailed statement describing the conditions -- the
12 position of Burney Resource Group, which is Exhibit 85,
13 they do make reference in there to some of the other
14 aspects of soil and water and of air quality. And the
15 Committee has made notes of those objections, those
16 continuing objections.

17 Thank you.

18 Any other matters that either of you feel need to
19 be raised at this time?

20 MS. MacLEOD: We have nothing further.

21 HEARING OFFICER BOUILLON: Ms. Holmes?

22 SENIOR STAFF COUNSEL HOLMES: Nothing further.

23 HEARING OFFICER BOUILLON: I want to note for the
24 record, also, that in attendance at this hearing has been
25 the applicant with Mr. McFadden, the staff represented by

1 Ms. Holmes and Mr. Buell and Linda Bond is here and I
2 don't see any other intervenor here nor any member of the
3 public interested in this case, and I've got a pretty good
4 look at the room.

5 I see no reason we can't adjourn the meeting, Mr.
6 Chairman.

7 CHAIRPERSON KEESE: Meeting adjourned.

8 (Thereupon the hearing was adjourned at
9 1:35 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Energy Resources and Conservation and
7 Development Commission hearing was reported in shorthand
8 by me, James F. Peters, a Certified Shorthand Reporter of
9 the State of California, and thereafter transcribed into
10 typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said hearing nor in any
13 way interested in the outcome of said hearing.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 12th day of March, 2001.

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23 JAMES F. PETERS, CSR, RPR

24 Certified Shorthand Reporter

25 License No. 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345